IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 887 of 2000
Date of Decision: 19.09.2006

Swadesh Kumar Gupta ...Petitioner

Vs.

Manohar Lal Gupta & Ors. ...Respondents

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.S.C.Nagpal, Advocate,
for the petitioner.

Mr.Sukant Gupta, Advocate,
for respondent No.1.

Vinod K.Sharma, J.

By way of present revision petition the petitioner has challenged the order dated 8.10.1999 passed by the learned Rent Controller, Chandigarh, vide which the application moved by the petitioner under Order 1 Rule 10 of the Code of Civil Procedure (for short the Code) for impleading him as party to the Rent Petition has been declined.

The respondent herein had filed a petition under Section 13 of the East Punjab Rent Restriction Act, 1949 (for short the Act) for eviction of the respondent herein. When the case was fixed for the evidence of the respondent herein, an application was moved under Order 1 Rule 10 of the

Code on behalf of Swadesh Kumar Gupta for impleading him as a party. It was submitted in the application that the demised premises i.e. Property Unit N. 521/Amrik Singh Road, Bathinda was under a registered mortgage with Smt. Parwati Devi wife of Chiranji Lal Gupta for a sum of Rs.6000/-. It was mentioned that 2/5th share in the said mortgage had not been redeemed till today. Parawati Devi expired on 12.9.1985 and it was claimed that Swadesh Kumar Gupta had become the sole owner on the basis of Will dated 14.7.1985 executed by Parawati Devi in his favour to the extent of 2/5th share in the demised premises. It was further case that Manmohan Lal Gupta had filed a suit for declaration and possession by way of partition to the extent of 1/4th share and the petitioner had also filed a counter claim in the said suit and had sought interim injunction for the recovery of rent from Adarsh Kumar Bhandari by the respondent herein.

It was also contended that the respondent had filed a Probate Petition No.3 of 1994 in this Court and the proceedings were still pending and that there was no bona fide need of the respondent for eviction of the property from the tenant and that the present eviction petition was filed with mala fide intention in order to harass the tenant. Thus, it was claimed that the petitioner was necessary party to the petition under section13 of the Act.

The application was contested by the respondent herein and it was submitted that the proceedings before the learned Rent Controller were not governed by the Code and the learned Rent Controller was to decide the matter between the landlord and the tenant and not to decide about the ownership of the property. The case of the respondent herein was that Adarsh Kumar had admitted the respondent to be his landlord and the

proceedings regarding the Probate of Will were pending in this Court. It was also claimed that the mortgage deed as alleged by the petitioner herein had already been redeemed at the time of the execution of the sale deed in favour of the respondent. Other allegations were also denied.

The learned Rent Controller came to the conclusion that Section 2 sub-section (c) of the Act defines the:

> "landlord" to mean "any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf of/ or for the benefit of any other person or as a trustee, guardian, receiver, executor or administrator for any other person and includes a tenant who sublets any building or rented land in the manner hereinafter authorised and, every person from time to time deriving title under the landlord."

The learned Trial Court came to the conclusion that as in the present petition the respondents Adarsh Kumar etc. has admitted the respondent herein as their landlord and the dispute between the landlord Manmohan Lal Gupta and Adarash Kumar Gupta, who challenged the title of the landlord Manmohan Lal Gupta could not be a ground to become party hence he was not a necessary party. In order to come to this conclusion the learned Rent Controller held that it was not within the ambit of learned Rent Controller to decide the question of ownership and he was merely to decide the matter between the landlord and tenant. The learned Rent Controller also held that a party disputing the title over the suit property could not be added as a party in the suit for eviction as the investigation of the title was not warranted by law.

The learned Rent Controller also took note of the fact that eviction on the ground of non-payment of rent by one co-owner who is landlord and the application by other co-owner as a party would not be maintainable. It was held that once the other co-owner had not inducted the tenant they could not be made party to the eviction petition.

The contention of the learned counsel for the petitioner that in case the Court is convinced that in a particular situation interest of justice requires a party could be impleaded and the technicalities could not be allowed to stand in the way. The contention of the learned counsel for the petitioner that the owner also comes within the definition of the landlord and therefore, he being the sole owner on the basis of Will was to be impleaded as a party was also rejected. However, learned Court also observed that since the demised premises had been redeemed at the time of execution of the sale deed the petitioner was not a necessary party to the proceedings.

Mr.S.C.Nagpal, learned counsel for the petitioner challenged the order passed by the learned Rent Controller primarily on the ground that the respondent had not come to the court with clean hands and therefore, was not entitled to any discretionary relief. In support of his contention, learned counsel for the petitioner referred to the orders passed by this Court on different dates which reads as under:

"4.7.2000

Learned counsel for the petitioner states that the property mortgaged has not been redeemed and no redemption deed has been placed on the record of the case.

Notice of motion for 9.10.2000.

16.7.2002

In the order dated July 4, 2000, while issuing the notice of motion, the contention of the petitioner that the property mortgaged with him had not been redeemed, had been noticed. On the other hand, the order of the Rent Controller proceeds on the assumption that the mortgage had been redeemed.

Mr. Sharma prays for an adjournment to verify the factual position and advance arguments.

To come up on 21.8.2002.

21.8.2002

Again a request for adjournment has been made on behalf of the Counsel for respondent No.1. One final opportunity is granted to him to produce the material to show that the mortgage of the property in dispute had been redeemed.

Adjourned to 1.10.2002.

1.10.2002

Counsel for the respondent has expressed his inability to place on record the redemption deed. He, however,points out that the probate proceedings in Probate No.3 of 1994 on the basis of the will dated 11.8.1995 in favour of all the four brothers,are pending and the case is likely to be decided in a near future as the judgment has already been reserved. He, therefore, prays that the present petition be heard thereafter.

To come up on 23.1.2003.

28.4.2003

Mr.Gupta, ld. counsel for the respondent No.1 states that a case relating to Probate No.3 of 1994 is pending in this Hon'ble Court in which arguments have already been addressed and judgment is reserved. He prays for some time to await the decision in the probate case.

Adjourned to August 11,2003.

11.8.2003

Mr.Gupta, learned counsel for respondent No.1 states that probate case was fixed for rehearing before Hon'ble Mr.Justice Amar Dutt and is now in the process of being reheard. He,therefore, prays that this matter be adjourned to await the decision in the probate case.

Mr.Nagpal appearing on behalf of the petitioner opposes this prayer. He, however,states that in case the prayer of the Counsel for respondent No.1 is to be granted, the trial court be restrained from passing the final order in the meanwhile.

After hearing the counsel for the parties, the case is adjourned to 17.11.2003 to await the decision in the probate case. Meanwhile the trial court shall not pass the final order till further order by this Court.

29.11.2004

Vide order dated 11.8.2003 this Court had adjourned the case in order to await the decision in the Probate Case

No.3 of 1994. Counsel for the parties state that the probate case is still pending and has not been decided so far.

Adjourned to 12.3.2005.

On the basis of above said orders, learned counsel for the petitioner contended that once the respondent had failed to produce on record the order of redemption and subsequently had prayed for adjournment of the case for awaiting the decision of the probate case, it is not open to the respondent now to plead that in the absence of order on probate the matter could be decided.

On the other hand, Mr.Sukant Gupta, learned counsel for the respondent vehemently contended that once the tenant had admitted him to be landlord in the premises, therefore, the petitioner was not a necessary party. He also placed reliance on the judgment of Hon'ble Supreme Court in **K.D.Dewan Vs. Harbhajan S.Parthar, AIR 2002 SC 67** to contend that for the purpose of seeking eviction of a tenant for personal occupation he need not be owner of the premises. The contention of the learned counsel for the respondent was that the learned Rent Controller had rightly come to the conclusion that the learned Rent Controller has to decide the eviction petition on the basis of averments made in the rent application and the stand taken by the tenant therein. It is not open to the Rent Controller to decide about the ownership of the property especially when in the present case the tenant admit the respondent to be landlord of the premises. Therefore, the ownership of the respondent is totally immaterial. Merely because one of the grounds on the basis of which the application filed by the petitioner was not found to be correct would not automatically lead to the conclusion that the impugned order is required to be set aside.

I have considered the arguments raised by the learned counsel for the parties and find that the learned Rent Controller rightly came to the conclusion that the petitioner could not be impleaded as a party in the rent petition in view of the admission of the tenant that the respondent was his landlord. The Hon'ble Supreme Court has been pleased to lay down that a person though not owner is entitled to maintain the petition for ejectment against the tenant provided it is proved that he is landlord of the premises, which negatives the stand of the learned counsel for the petitioner.

A reading of the orders passed by this Court on different dates does not in anyway show that the respondent has not come to the court with clean hands. If a particular argument is raised or an adjournment is sought to await a decision in the probate case it cannot be used as estoppel against the respondent to have the decision on merits as is sought to be contended by the learned counsel for the petitioner. The petitioner is therefore, neither a necessary party nor proper party in the eviction petition filed against the tenant by the landlord where the relationship is admitted.

Accordingly, there is no merit in the present revision petition and the same is dismissed.

(Vinod K.Sharma)
Judge

September 19,2006
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